

## EIGHTY-THIRD SESSION

### *In re Sethi* (No. 3)

Judgment 1657

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Devendra Nath Sethi against the World Health Organization (WHO) on 16 September 1996 and corrected on 28 October 1996, the WHO's reply of 3 February 1997, the complainant's rejoinder of 14 February and the Organization's surrejoinder of 21 April 1997;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 3, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Several facts of relevance to this case appear under A in Judgment 1557 on Mr. Sethi's first complaint.

That judgment was delivered on 11 July 1996. On 2 August the WHO paid the complainant 3,000 United States dollars in moral damages and costs. On 22 August the procedure for review of the grading of his post was resumed. On 2 September the administrative services officer (ASO), his first-level supervisor, made detailed comments on the draft post description that the complainant had drafted. The personnel unit of the Regional Office for South East Asia (PER/SEARO) forwarded those comments to him on 5 September, inviting him to answer. On 16 September 1996 he wrote objections to his supervisor's comments and filed this complaint.

B. The complainant contends that the WHO failed to take a decision on his claim to regrading within sixty days of the delivery of Judgment 1557, though that was what Article VII(3) of the Tribunal's Statute required. He submits that the Organization's dilatory and "unconstitutional" tactics are proof of its long-standing hostility towards him. He pleads that Judgment 1557 did not take account of the injury he has sustained and that he has been discriminated against, other claims like his own having been promptly met.

He claims the immediate application of the procedure for the grading of his post, and substantial awards of damages and costs.

C. The WHO replies that it is executing Judgment 1557 with due diligence and in accordance with the applicable procedure. It explains that before forwarding to headquarters -- as Judgment 1557 requires -- a claim to the regrading of a post in a regional office, a new post description must be certified by the Regional Director and approved by the Regional Office.

Article VII(3) of the Statute does not, in its view, require it to execute a judgment within sixty days.

The complainant's new first-level supervisor, who needed time to learn the job before commenting on his performance, confirmed his predecessor's comments on 21 January 1997.

D. In his rejoinder the complainant argues that the delivery of Judgment 1557 is analogous to the making of a "claim", within the meaning of Article VII(3), by the Tribunal on his behalf. So the Organization was required to take a final decision on the regrading of his post within sixty days. It had no intention of executing the judgment in processing his claim to regrading. By a memorandum of 17 December 1996 his new supervisor gave almost full approval to his draft description of his post. The Organization's bad faith is plain from its ignoring that memorandum and making his supervisor write another. Lastly, he says he has lost confidence in the WHO's impartiality and asks that an independent expert review his post.

E. In its surrejoinder the Organization challenges the complainant's reading of Article VII(3). It acknowledges that its wish to have the views of his new supervisor and his own consent, though neither were

required, did hold up the proceedings a little, but observes that he is himself partly to blame because he proved unhelpful.

## CONSIDERATIONS

1. This complaint is a sequel to Judgment 1557 of 11 July 1996, which was about Mr. Sethi's first complaint and set out the main facts of the case.
2. Before 22 April 1993 the complainant had made several requests for the upgrading of his post from ND.8, a grade in the General Service category, to P.2/P.3, which is in the Professional category. In Judgment 1557 the Tribunal held that the rejection of those requests neither justified nor constituted denial of yet another request he had made on 22 April 1993, the reason being that that "was a new one, supported by new material and made after his supervisors had for the first time acknowledged that the description of his post needed revising".
3. According to WHO Manual paragraphs II.1.130 and II.1.200 that request should first have been processed by the regional personnel officer at the Regional Office for South East Asia, in New Delhi, in accordance with the regional procedures and then transmitted to the Personnel Division at headquarters in Geneva for decision. As those requirements had not been observed, the Tribunal quashed the Director-General's decision of 12 April 1995 to dismiss the complainant's appeal and directed the Organization to process anew his request of 22 April 1993 for the regrading of his post. It also awarded him moral damages and costs.
4. On 2 August 1996 the WHO paid the complainant the moral damages and costs.
5. By a memorandum dated 22 August 1996 the Personnel Division of the Regional Office sent the complainant's request of 22 April 1993 and the draft description of his post to his first-level supervisor, the administrative services officer (ASO). In that memorandum Personnel asked the ASO to review the draft in consultation with the complainant, who got a copy of it on 23 August. The ASO submitted his detailed observations in a memorandum of 2 September, of which the complainant was sent a copy on 5 September for observations: he was told that once they had been received further action would be taken to process his request.
6. On 16 September he replied to the memorandum of 5 September saying that he did not agree with his supervisor's comments because the post description that he had himself submitted was based on the duties and responsibilities he was actually performing. He asked that the evaluation of the description of his post "by the authorized mechanism be carried out on the basis of [his] submission".
7. The same day -- 16 September -- he filed this complaint.
8. The complainant pleads that the date of Judgment 1557, 11 July 1996, must be taken as that of his claim and that, the WHO having failed to take a final decision within sixty days thereafter, he was free under Article VII(3) of the Tribunal's Statute to come directly to the Tribunal. He asks the Tribunal to "direct the Director-General of WHO to immediately undertake proceedings to review the classification of the post held by the complainant, through desk audit and other prescribed procedures, to reach a conclusion as objectively as possible" and to award him damages and costs.
9. The WHO's reply dated 3 February 1997 shows that not even then, six months after Judgment 1557, had the processing of the case at the regional level been completed. In its surrejoinder the WHO stated that it would be by the end of May 1997.

### *Receivability*

10. Judgment 1557 required the WHO to process the complainant's request for upgrading. That had to be done in keeping with the Manual, which required processing according to the regional procedures and then transmission to Personnel at headquarters for decision.
11. According to Staff Rule 1230.1.4 a staff member who alleges that the WHO post classification standards have not been properly applied to him is entitled to appeal. Rules 1230.2 and 1230.8.4 say that where the regional office does not have authority to apply those standards he must address such appeal to the

headquarters Board of Appeal. According to 1230.8.1, he may appeal only when he has received written notice of a final decision. Rule 1230.8.2 provides that if a staff member assigned to a duty station other than headquarters has not received a final reply to his request within three months:

"the request shall be deemed to have been rejected and such rejection shall be subject to appeal as if final action had been taken on it as in Rule 1230.8.1 ..."

Indeed Judgment 1557 shows that that is how the complainant came to lodge the internal appeal which gave rise to his first complaint.

12. So Personnel at headquarters had three months in which to take a decision on the complainant's request; failing an express decision within that period, refusal would have been implied. He was not entitled to infer refusal before three months had passed and even thereafter his remedy was to appeal to the headquarters Board.

13. Even though there has been unacceptable delay in the WHO's processing of the complainant's request, he has failed to exhaust his internal remedies under the Staff Regulations and Rules before filing this complaint and so to comply with the requirement of by Article VII(1) of the Statute.

14. Even if, as he contends, Article VII(3) were applicable, Personnel at headquarters could not have taken a decision on his request until it had been duly processed at the regional level and sent to headquarters; no fair decision would have been possible if his supervisor's observations had been sent without getting his response; and a reasonable time had therefore to be allowed for such processing at the regional level.

15. The complainant lodged his complaint just sixty-seven days after the publication of Judgment 1557. The eleven days which he took to submit his comments must be excluded in reckoning the period of sixty days stipulated in Article VII(3). So even if his own hypothesis were acceptable, he would have failed to satisfy Article VII(3).

16. The complaint is irreceivable.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, Vice-President of the Tribunal, Mr. Mark Fernando, Judge, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

Michel Gentot  
Mark Fernando  
Julio Barberis  
A.B. Gardner